

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 16-cr-20833

v.

U.S. DISTRICT COURT JUDGE
GERSHWIN A. DRAIN

HAROLD ASHBURN AND
KIMBERLY ASHBURN,

Defendant.

_____ /

ORDER GRANTING DEFENDANTS' MOTION TO TERMINATE
PROBATION [ECF NO. 79]

On December 15, 2022, this Court sentenced each defendant on felony charges of health care fraud to two-year terms of probation, with various conditions. Both middle-aged Defendants are employed, reside in Flint with their young granddaughter, they have declining health, and are in compliance with all conditions of probation.

On January 10, 2024, Defendants filed a Motion to Terminate Probation. The Government did not respond. Defense counsel consulted Defendants' probation officer and the prosecutor on this case. Neither individual stated an objection to Defendants' request for early termination. ECF No. 79, PageID.250.

The court has the discretionary authority to terminate probation after one year. 18 U.S.C. §3564(c) states, in relevant part, that the Court, “after considering the factors set forth in § 3553(a) to the extent that they are applicable,” may, “pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation,” terminate a term of probation previously ordered and discharge the defendant at any time “after the expiration of one year of probation in the case of a felony.” The Court may terminate probation early “if it is satisfied that such action is warranted by the conduct of the defendant and the interest of justice.”

Fed. R. Crim. P. 32.1 (c)(1)-(2) provides that before modifying the conditions of probation or supervised release, the Court “must hold a hearing.” However, no hearing is required as “the relief sought is favorable to the person and does not extend the term of probation.” *Id.*

Considering the factors under 18 U.S.C § 3553(a), the Court finds that the conducts of the Defendants and the interests of justice warrant early termination and discharge of their probation terms. Defendants have been on probation for approximately one year and one month. In light of the nature and circumstances of the offense and the history and characteristics of the Defendants, the Court finds that the probation term Defendants have already served is sufficient to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense. Further, the probation term that Defendants have served is adequate

to deter criminal conduct, protect the public, and provide Defendants with correctional treatment in the most effective manner.

For these reasons, Defendants' Motion is **GRANTED**.

SO ORDERED.

Dated: January 19, 2024

/s/Gershwin A. Drain
GERSHWIN A. DRAIN
United States District Judge

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on January 19, 2024, by electronic and/or ordinary mail.

/s/Amanda Chubb for Lisa Bartlett
Case manager